ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

STEVE CLAYTON, Derivatively on Behalf of Nominal Defendant SYSTEMAX, INC., Plaintiff, v. RICHARD LEEDS, ROBERT LEEDS, BRUCE LEEDS, GILBERT FIORENTINO, STACY S. DICK, ANN R. LEVEN, ROBERT D. ROSENTHAL, and STEVEN M. GOLDSCHEIN, Defendants, and SYSTEMAX, INC., a Delaware corporation, Nominal Defendant.	Civil Action No. IN CLERK'S OFFICE U.S. DISTRICT COURT E.D.N.Y ★ MAY 24 2005 ★ BROOKLYN OFFICE CV 05 2513 TRAGER, J. GORENSTEIN, M.J. **JURY TRIAL DEMANDED**

VERIFIED DERIVATIVE COMPLAINT

Plaintiff, by his attorneys, submits this Verified Derivative Complaint (the "Complaint") against the defendants named herein.

NATURE OF THE ACTION

1. This is a shareholder's derivative action brought for the benefit of nominal defendant Systemax, Inc. ("Systemax" or the "Company") against certain members of its Board of Directors (the "Board") and certain of its executive officers seeking to remedy defendants' multiple breaches of fiduciary duties, as alleged herein.

JURISDICTION AND VENUE

2. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332. The amount in controversy exceeds $75,000, exclusive of interest and costs. This action is not a collusive one to confer jurisdiction on a court of the United States which it otherwise would not have.

3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391(b) insofar as a substantial part of the events or omissions giving rise to the claim occurred within this judicial district.

PARTIES

4. Plaintiff Steve Clayton, a citizen of Mississippi, is, and was at all relevant times, a shareholder of nominal defendant Systemax.

5. Nominal defendant Systemax is a Delaware corporation with its principal executive offices located at 11 Harbor Park Drive, Port Washington, New York 11050. According to the Company's financial filings, Systemax is a direct marketer of brand name and private label products, including personal desktop computers, notebook computers, computer related products and industrial products, in North America and Europe.

6. Defendant Richard Leeds ("Richard Leeds") has served as Chairman of the Board and as Chief Executive Officer of the Company since 1995. Richard Leeds is the brother of defendants Bruce Leeds and Robert Leeds. According to the Company's 2005 Schedule 14A Annual Meeting Proxy filed on May 4, 2005 (the "2005 Proxy"), the Leeds brothers collectively own or control approximately 72% of the outstanding common stock of Systemax. Richard Leeds also serves on the Board's Executive Committee (the "Executive Committee"). According

to the 2005 Proxy, "[t]he Board of Directors formed an Executive Committee on March 2, 2004 consisting of the Chairman of the Board and any Vice Chairman and such other directors as may be named thereto by the Board of Directors. The current members of the Executive Committee are Messrs. Richard Leeds, Robert Leeds and Bruce Leeds. The function of the Executive Committee is manage the affairs of the Corporation between meetings of the Board of Directors and the Committee has all of the powers of the Board of Directors not inconsistent with any provisions of the Delaware General Corporation Law, the Company's By-Laws or other resolutions adopted by the Board. Among other duties (as may be assigned by the Board from time to time), the Executive Committee oversees the operations of the Company, supervises the executive officers of the Company, reviews and makes recommendations to the Board of Directors regarding the strategic direction of the Company and reviews and makes recommendations to the Board of Directors regarding all possible acquisitions or other significant business transactions." Upon information and belief, Richard Leeds is a New York citizen.

7. Defendant Robert Leeds ("Robert Leeds") has served as Vice Chairman of the Board since 1995. Robert Leeds served as the Company's President of Domestic Operations from 1995 until March 2005. Robert Leeds also serves as the Chairman of the Board's Compensation Committee (the "Compensation Committee"). According to the Company's financial filings, "[t]he Compensation Committee's responsibility is to review and approve corporate goals relevant to the compensation of the Chief Executive Officer and, after an evaluation of the Chief Executive Officer's performance in light of such goals, to set the compensation of the Chief Executive Officer. The Compensation Committee also approves (a)

the annual compensation of the other executive officers of the Company, (b) the annual compensation of certain subsidiary managers, and (c) all individual stock-based incentive grants. Thus, Robert Leeds is in position to and does control the compensation of his brother, Richard Leeds (the Company's CEO) and the other officers and directors of the Company. Upon information and belief, Robert Leeds is a New York citizen.

8. Defendant Bruce Leeds ("Bruce Leeds") has served as Vice Chairman of the Board since 1995. Bruce Leeds served as the Company's President of International Operations from 1990 until March 2005. Upon information and belief, Bruce Leeds is a New York citizen.

9. Defendant Gilbert Fiorentino ("Fiorentino") has served as a director of Systemax since May 2004. Fiorentino joined the Board when the Company acquired Tiger Direct, Inc. ("Tiger Direct"), a corporation which he founded in 1996. Tiger Direct is a wholly-owned subsidiary of Systemax and Fiorentino has served as its President and Chief Executive Officer since it was acquired by Systemax. Upon information and belief, Fiorentino is a Florida citizen.

10. Defendant Stacy S. Dick ("Dick") has served as a director of Systemax since 1995. Dick serves as the Chairman of the Board's Audit Committee (the "Audit Committee"). The duties of the Audit Committee are set forth in detail herein. Dick also serves on the Compensation Committee. Upon information and belief, Dick is New York citizen.

11. Defendant Ann R. Leven ("Leven") has served as a director of Systemax since 2001. Leven serves as a member of the Audit Committee. Upon information and belief, Leven is a Maryland citizen.

12. Defendant Robert D. Rosenthal ("Rosenthal") has served as a director of Systemax since 1995. Rosenthal serves as a member of the Audit Committee and the

Compensation Committee. Upon information and belief, Rosenthal is a New York citizen.

13. Defendant Steven M. Goldschein ("Goldschein") has served as Senior Vice President and Chief Financial Officer of Systemax since 1998. Upon information and belief, Goldschein is a New York citizen.

14. Defendants Richard Leeds, Robert Leeds, Bruce Leeds, Fiorentino and Goldschein, will be referred to herein as the "Officer Defendants." Defendants Dick, Leven, and Rosenthal will be referred to herein as the "Audit Committee Defendants." Collectively, the Officer Defendants and Audit Committee Defendants will be referred to herein as the "Individual Defendants."

DUTIES OF THE INDIVIDUAL DEFENDANTS

15. By reason of their positions as officers and/or directors of the Company and because of their ability to control the business and corporate affairs of the Company, the Individual Defendants owed the Company and its shareholders the fiduciary obligations of good faith, trust, loyalty, and due care, and were and are required to use their utmost ability to control and manage the Company in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of the Company and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit. Each of the Individual Defendants owes to the Company and its shareholders the fiduciary duties to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

16. The Individual Defendants, because of their positions of control and authority as

directors and/or officers of the Company, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

17. To discharge their duties, the officers and directors of the Company were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the Company. By virtue of such duties, the officers and directors of the Company were required to, among other things:

a. exercise good faith to ensure that the affairs of the Company were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of their business;

b. exercise good faith to ensure that the Company was operated in a diligent, honest and prudent manner and complied with all applicable federal and state laws, rules, regulations and requirements, including acting only within the scope of its legal authority;

c. exercise good faith to ensure that the Company's financial statements were prepared in accordance with Generally Accepted Accounting Principles ("GAAP"); and

d. when placed on notice of improper or imprudent conduct by the Company and/or its employees, exercise good faith in taking action to correct the misconduct and prevent its recurrence.

18. In addition to the foregoing, all of the Individual Defendants were responsible for maintaining and establishing adequate internal accounting controls for the Company and to ensure that the Company's financial statements were based on accurate financial information.

According to GAAP, to accomplish the objectives of accurately recording, processing, summarizing, and reporting financial data, a corporation must establish an internal accounting control structure. Among other things, the Individual Defendants were required to:

a. make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and

b. devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that –

(1) transactions are executed in accordance with management's general of specific authorization;

(2) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP.

19. Moreover, according to Appendix D to Statement on Auditing Standards No. 55 ("SAS 55"), management should consider, among other things, such objectives as: (i) making certain that "[t]ransactions are recorded as necessary ... to permit preparation of financial statements in conformity with generally accepted accounting principles ... [and] to maintain accountability for assets;" and (ii) make certain that "[t]he recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences."

20. According to SAS 55.13:

> Establishing and maintaining an internal control structure is an important management responsibility. To provide reasonable assurance that an entity's objectives will be achieved, the internal control structure should be under ongoing supervision by management to determine that it is operating

as intended and that it is modified as appropriate for changes in conditions.

21. As set forth herein, the Individual Defendants failed to properly exercise their fiduciary duties as set forth above which has caused, and will continue to cause the Company to suffer damages, as alleged herein.

BACKGROUND ALLEGATIONS

22. During the Relevant Period, the Individual Defendants told the Market that the Company's operations were managed in a prudent fashion pursuant to all relevant rules and regulations. For example, as set forth in the Company's original Annual Report on Form 10-K for fiscal year 2003 which was published on March 30, 2004 (the "2003 10-K"), the Individual Defendants disclosed:

> The Company has carried out an evaluation under the supervision of management, including the Chairman and Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures. Based on that evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that, as of December 31, 2003, the Company's disclosure controls and procedures were effective to ensure that information required to be disclosed by the Company in the reports filed or submitted by it under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and include controls and procedures designed to ensure that information required to be disclosed by the Company in such reports is assembled and reported to the Company's management, including the Chairman and Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosures.

The 2003 10-K was signed by all of the Individual Defendants, save Fiorentino.

23. This statement, and all other similar statements made by the Individual Defendants regarding the effectiveness of the Company's internal controls and the propriety of its revenue recognition practices, was demonstrably false. As set forth herein, the Individual Defendants have now admitted that the Company's internal controls were and are materially

deficient which has caused Systemax to suffer damages. These damages include, but are not limited to: (a) an internal investigation which has caused a multi-year restatement of the Company's previously-issued financial results; (b) the valuable financial benefits awarded to the Officer Defendants that were based on false results.

SUBSTANTIVE ALLEGATIONS

24. On February 21, 2005, the Individual Defendants caused Systemax to file a Current Report on Form 8-K which disclosed:

> Systemax Inc. (NYSE:SYX), a leading distributor and manufacturer of PC hardware, related computer products and industrial products in North America and Europe, announced today that it will restate its financial statements for each of the first three quarters of 2004 and the year ended December 31, 2003, following the discovery of certain errors in accounting for inventory at its United Kingdom subsidiary. Investors are cautioned not to rely on the Company's historical financial statements for the aforementioned periods.
>
> The Company is in the process of completing its review of the periods in question. Once this review is complete, the Company will restate its historical results for these periods. The Company expects to complete its review of this matter prior to issuing its earnings release for the quarter and fiscal year ended December 31, 2004. It is presently anticipated that net income for the full year of 2003 (previously reported as $5.6 million) will be reduced by approximately $2.1 million to $2.5 million and net income for the nine months of 2004 (previously reported as $5.8 million) will be reduced by approximately $1.3 million to $1.6 million as a result of the correction of these errors. The restatement will result in reducing previously reported diluted earnings per share by $.06 to $.07 for the year ended December 31, 2003 (previously reported as $.16) and by $.04 to $.05 for the nine months ended September 30, 2004 (previously reported as $.16). The Company currently anticipates that it will be able to file its Form 10-K/A for 2003, amended Form 10-Q's for the first three quarters of 2004 and Form 10-K for 2004 by March 31, 2005.

25. Thus, the Individual Defendants have admitted that the Company's earnings for fiscal year 2003 will be reduced by almost 50%, and that the Company's earnings for the first three quarters of fiscal year 2004 will be reduced by 33%.

26. On April 15, 2005, the Individual Defendants caused Systemax to file its Annual

Report on Form 10-K for fiscal year 2004 (the "2004 10-K"), which disclosed, *inter alia,*:

> As previously disclosed in a Current Report on Form 8-K, which we filed on February 21, 2005, we announced that we would restate previously filed consolidated financial statements for the year ended December 31, 2003 and the first three quarters of 2004 to correct errors in accounting for inventory at our United Kingdom subsidiary. Management has concluded that the internal control deficiencies that made the restatements necessary indicate the existence of a material weakness, as defined by the Public Company Accounting Oversight Board's Auditing Standard No. 2. Based on this evaluation and due to existence of the internal control deficiencies described below, our Chairman and Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures were not effective as of December 31, 2004. The design and operation of our disclosure controls and procedures did not reduce to a relatively low level of risk the chance or chances that a material misstatement would occur and not be detected.
>
> As a result of a review of the subsidiary's inventory activities for the fiscal years ended December 31, 2002, 2003 and 2004, the Company determined that the errors requiring this restatement were principally a result of changes in the way certain inventory transactions were processed and recorded and an inaccurate recording of a period end cut-off. These errors were undetected or unrecognized as a result of the following weaknesses and deficiencies in the subsidiary's controls:
>
> - Lack of local management review procedures
> - Rapid turnover of accounting personnel together with little or no training as to manual detection procedures necessary to properly close the books
> - Deficiencies in the subsidiary's month-end closing process
> - Insufficient formalized procedures to ensure that all relevant transactions were accounted for
> - Breakdown in communication between accounting and operations personnel
> - Insufficient staffing of the accounting function at the subsidiary
> - Inadequate information technology general controls with respect to inventory movements

27. On May 11, 2005, the Individual Defendants caused Systemax to issue a Current Report on Form 8-K which disclosed:

> Systemax Inc. (NYSE:SYX), a leading distributor and manufacturer of PC hardware, related computer products and industrial products in North America and Europe, announced today that it will restate its results for the year ended December 31, 2004 following the discovery of errors in accounting for inventory at its Tiger Direct, Inc. subsidiary. The Company is currently reviewing its records to determine which quarters

> in 2004 were affected and whether the accounting errors may also have affected periods prior to 2004. Investors are cautioned not to rely on such historical financial statements.
>
> The Company, upon completion of its review, will restate its historical results for the affected period or periods. The Company presently has no estimate for completion of its review but does not believe that such review will extend beyond the end of May. When the review is complete, the Company will file an amendment to its Form 10-K for 2004 and release its first quarter results. It is presently anticipated, assuming no earlier periods are affected, that net income for the full year ended December 31, 2004 (previously reported as $12.6 million or $.35 per diluted share) will be reduced to a range of approximately $9.0 to $9.6 million or $.25 to $.27 per diluted share.
>
> As previously disclosed in the Company's annual report on Form 10-K for the year ended December 31, 2004, Systemax is not currently required to comply with Section 404 of the Sarbanes-Oxley Act. The Company has disclosed that it has identified a number of internal control deficiencies that may affect the timeliness and accuracy of recording transactions which have not yet been remediated.

28. On May 13, 2005, the Individual Defendants caused Systemax to issue a Current Report on Form 8-K which disclosed:

> Systemax Inc. (NYSE:SYX), a leading distributor and manufacturer of PC hardware, related computer products and industrial products in North America and Europe, announced today that it is postponing its 2005 Annual Stockholders Meeting scheduled for Tuesday, May 24, 2005. The Company expects to announce a new meeting date within the next few weeks. The Board of Directors of the Company decided to postpone the Annual Meeting as a result of the Company's previously announced decision to restate its financial results for the year ended December 31, 2004 following the discovery of errors in accounting for inventory at its Tiger Direct, Inc. subsidiary. The Board believes that it is in the best interests of the stockholders to postpone the Annual Meeting until after the Company circulates restated financial results.

THE INDIVIDUAL DEFENDANTS BREACH THEIR FIDUCIARY DUTIES

29. The Individual Defendants received numerous reports regarding problems with Systemax's accounting and internal control practices and procedures. Through their attendance at Board, Audit Committee, and officer meetings; their review of the Company's financial

statements; and conversations with the Company's management, internal auditors, and external auditors, the Individual Defendants knew, or were extremely reckless in not knowing that Systemax's internal controls were materially deficient.

30. In breach of both their fiduciary duty of good faith and, with respect to the Audit Committee Defendants, their responsibilities pursuant to the Board's Audit Committee Charter, the Individual Defendants wilfully ignored the obvious and pervasive problems with Systemax's accounting and internal control practices and procedures and made no effort to correct the problems or prevent their recurrence.

31. The foregoing misconduct of the Individual Defendants caused Systemax to sustain damages, including, but not limited to, costs and expenses associated with the Company's restatement of historical financial results, and a loss of credibility in the marketplace.

THE OFFICER DEFENDANTS ARE UNJUSTLY ENRICHED

32. As set forth above, the Individual Defendants have announced that the Company will restate its financial results for fiscal years 2003 & 2004. During those time periods, the Officer Defendants recived valuable financial benefits from the Company which were based on, *inter alia*, the Company's admittedly false financial results, as follows:

Name	Year	Salary	Cash Bonus	Stock Options
Richard Leeds	2003	$378,101	$75,000	0
	2004	$403,348	$250,000	0
Robert Leeds	2003	$378,101	$75,000	0
	2004	$403,348	$0	0

Bruce Leeds	2003	$378,101	$75,000	0
	2004	$403,348	$0	0
Fiorentino	2004	$400,000	$250,000	155,557
Goldschein	2003	$371,157	$30,000	40,000
	2004	$396,193	$40,000	0

33. The financial benefits described above were based on the Company's purported performance which turned out to be false. Thus, because the Officer Defendants were unjustly enriched at the Company's expense, it would be improper to allow the Officer Defendants to retain these financial benefits in light of the Company's restatement of its historical financial results.

DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS

34. Plaintiff brings this action derivatively in the right and for the benefit of Systemax to redress injuries suffered and to be suffered by Systemax as a result of the breaches of fiduciary duty and unjust enrichment of the Individual Defendants.

35. Plaintiff will adequately and fairly represent the interests of Systemax and its shareholders in enforcing and prosecuting its rights, and he has retained counsel experienced with this type of litigation.

36. Plaintiff is an owner of Systemax common stock and was an owner of Systemax common stock at all times relevant to the Individual Defendants' wrongful course of conduct alleged herein.

37. As a result of the facts set forth herein, plaintiff has not made any demand on the Systemax Board of Directors to institute this action against the Individual Defendants. Such

demand would be a futile and useless act because the Board is incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute this action.

38. The Board currently consists of seven members: defendants Richard Leeds, Robert Leeds, Bruce Leeds, Fiorentino, Dick, Leven, and Rosenthal. The Board is legally incapable of independently and disinterestedly considering a demand for the following reasons:

a. The Individual Defendants have recently admitted that there is not a majority of independent directors on the Board that could consider any pre-suit demand. As set forth in the 2005 Proxy, "[i]n the judgment of the Board of Directors, each of the following Directors of the Company meets the standards for independence required by the New York Stock Exchange: Rosenthal, Dick and Leven." Putting aside the Individual Defendants characterization of Rosenthal, Dick and Leven as "independent", because the Individual Defendants have admitted that 4 current directors (the Leeds brothers and Fiorentino) lack independence from one another, a majority of the current Board lacks independence, and thus, is legally incapable of considering a pre-suit demand;

b. Due to their long-standing, close family and business relationships with each other, the Leeds brothers are legally incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute this action against each other;

c. By virtue of their collective more than 70% ownership of the Company, and their positions with the Company, the Leeds brothers are in position to, and do dominate and control the Board and the management of the Company. The Leeds brothers, and particularly defendant Robert Leeds (as a result of his position on the Board's Compensation Committee), are in a position to and do control the compensation of all of the Officer Defendants, including the compensation of defendant Fiorentino who also serves on the Board. In fact, the Individual Defendants have admitted that the Leeds family controls the Company. As set forth in the 2005 Proxy: "A 'controlled company" is defined by the New York Stock Exchange as a company of which more than 50% of the voting power is held by an individual, group or other company. [Systemax] is a "controlled company" in that more than 50% of the voting stock of the Company, in the aggregate, is owned by certain members of the Leeds family (including Richard Leeds, Robert Leeds and Bruce Leeds, each of whom is an officer and Director of the Company) and certain Leeds' family trusts. (collectively, the "Leeds Group"). The Leeds Group has entered into a Stockholders Agreement with respect to certain shares of Company stock it owns.";

d. Fiorentino is not independent from the Leeds brothers, as his employment with the Company is his principal professional occupation and taking any action against them would threaten his ability to earn a living. As such, Fiorentino owes his position and his livelihood to maintaining the good will of the Leeds brothers who serve as the Company's Chairman and Vice-Chairmen of the Board. In addition to the foregoing, upon information and belief, Fiorentino directly reports to defendant Richard Leeds, whose brother, Robert Leeds, serves as the Chairman of the Compensation Committee. As set forth herein, Fiorentino has received, and expects to continue to receive substantial monetary benefits due to his employment with Systemax and his association with the Leeds brothers;

e. As a result of the facts set forth herein, including, but not limited to, the Individual Defendants' admission that the Company's internal controls are materially deficient, there is a substantial likelihood that the Audit Committee Defendants will be held personally liable for breaching their fiduciary duties.

COUNT I

AGAINST THE INDIVIDUAL DEFENDANTS FOR BREACH OF FIDUCIARY DUTY OF GOOD FAITH IN CONNECTION WITH THE MANAGEMENT OF SAKS

39. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if fully set forth herein.

40. As alleged in detail herein, each of the Individual Defendants had a duty to, *inter alia*, exercise good faith to ensure that the Company was operated in a diligent, honest and prudent manner and, when placed on notice of improper or imprudent conduct by the Company and/or its employees, exercise good faith in taking action to correct the misconduct and prevent its recurrence.

41. As alleged in detail herein, the Individual Defendants failed to properly manage the Company's business pursuant to their fiduciary duties. Thus, the Individual Defendants breached their fiduciary duty of good faith.

42. As a direct and proximate result of the Individual Defendants' foregoing breaches

of fiduciary duties, the Company has sustained damages, as alleged herein.

COUNT II
AGAINST THE INDIVIDUAL DEFENDANTS
FOR BREACH OF FIDUCIARY DUTY OF GOOD FAITH
FOR FAILURE TO ESTABLISH ADEQUATE INTERNAL CONTROLS

43. Plaintiff incorporates by reference all previous and subsequent paragraphs as if set forth fully herein.

44. As alleged in detail herein, each of the Individual Defendants had a duty to Systemax and its shareholders to establish and maintain adequate internal accounting controls to ensure that the Company's financial results were recorded in compliance with GAAP and SEC rules and regulations.

45. The Individual Defendants abdicated their responsibility to establish and maintain adequate internal accounting controls at Systemax, having made no good faith effort to fulfill their fiduciary duties.

46. As a direct and proximate result of the Individual Defendants' failure to perform their fiduciary duties, Systemax has engaged in imprudent and unlawful activities which have caused it to suffer damages, as alleged herein.

COUNT III
AGAINST ALL INDIVIDUAL DEFENDANTS FOR BREACH OF FIDUCIARY DUTIES FOR DISSEMINATION OF MISLEADING AND INACCURATE INFORMATION

47. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set forth fully herein.

48. As alleged in detail herein, each of the Individual Defendants had a duty to ensure that Systemax disseminated accurate, truthful, and complete information to the Market.

49. Each of the Individual Defendants violated the fiduciary duties of care, loyalty, and good faith by causing or allowing the Company to disseminate to the Market materially misleading and inaccurate information through public statements, including, but not limited to, press releases and SEC filings (as described herein) covering a two year period.

50. Each of the Individual Defendants also: (a) failed to disclose material information to the Market in a timely manner; and (b) failed to correct the Company's publicly reported financial results and guidance. These actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

51. As a direct and proximate result of the Individual Defendants' foregoing breaches of fiduciary duties, Systemax has suffered damages, as set forth herein.

COUNT IV

AGAINST THE OFFICER DEFENDANTS FOR UNJUST ENRICHMENT

52. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if fully set forth herein.

53. The Officer Defendants were unjustly enriched by their receipt of salaries, cash bonuses, and stock options, as alleged herein, and it would be unconscionable to allow them to retain the benefits of their improper conduct.

54. To remedy the Officer Defendants' unjust enrichment, the Court should order them to disgorge to the Company all salaries, cash bonuses, restricted stock, and stock options alleged herein.

WHEREFORE, plaintiff demands judgment as follows:

A. Against all of the Individual Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary duties;

B. Ordering the Officer Defendants to disgorge to the Company all salaries, cash bonuses, and stock options alleged herein;

C. Granting appropriate equitable relief to remedy defendants' breaches of fiduciary duties;

D. Awarding to plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses;

E. Granting such other and further relief as the Court deems just and proper.

Dated: May 24, 2005

WECHSLER HARWOOD LLP

By: [signature]

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SYSTEMAX, INC. VERIFICATION

I, Steve Clayton, hereby verify that I am familiar with the allegations in the Complaint, and that I have authorized the filing of the Complaint, and that the foregoing is true and correct to the best of my knowledge, information and belief.

DATE: 20 May 2005

STEVE CLAYTON